No. 12104

In the United States Court of Appeals for the Ninth Circuit

BEN C. KOEPKE, INDIVIDUALLY, AND AS AREA RENT DIRECTOR, LOS ANGELES DEFENSE-RENTAL AREA, OFFICE OF RENT CONTROL, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

J. FONTECCHIO, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF OF APPELLANT

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INDEX

TABLE OF AUTHORITIES

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STATEMENT OF JURISDICTION

Appellant, defendant below, appeals from a final judgment of the United States District Court for the Southern District of California, Central Division, granting plaintiff-appellee's motion for summary judgment in an action in equity for both declaratory judgment and injunctive relief. The action was first brought by appellee in the Superior Court of the State, in and for the County of Los Angeles, for a declaratory judgment that his housing accommodations were decontrolled by the Housing and Rent Act of 1947, as amended, and for an injunction re-

straining appellant, an Area Rent Director in Los Angeles, from establishing and enforcing maximum rentals for these housing accommodations (R. 1). The action was removed to the United States District Court on motion of defendant. Final judgment in favor of appellee was entered on September 13, 1948 (R. 26). Notice of Appeal was filed on October 21, 1948 (R. 29). The jurisdiction of this Court is invoked pursuant to Section 1291 of the Judicial Procedure Code (28 U. S. C. A. 1291).

STATEMENT OF THE FACTS

The facts in this case are briefly as follows:

On March 26, 1948, the appellee filed suit in the Superior Court, Los Angeles County, against the defendant individually and as the Area Rent Director for the Los Angeles Defense-Rental Area, for a declaratory judgment that his housing accommodations were decontrolled by the Housing and Rent Act of 1947, as amended, and for an injunction restraining appellant from establishing a maximum rent thereon. Upon motion of appellant, this action was removed to the United States District Court.

A. *The complaint*

In his complaint (R. 2), appellee alleged that he was the owner of property located at 8012–8014 South Vermont Avenue, Los Angeles, within the Los Angeles Defense-Rental Area (Par. 1, R. 2); that appellant was the "duly appointed qualified and acting Area Rent Director" for the Office of the Housing Expediter, "an agency of the United States Govern-

ment," and that he has been administering the Housing and Rent Act of 1947 "pursuant to a delegation of authority so to do issued by the Housing Expediter" (Par. 2, R. 3). Appellee alleged that on March 1, 1947, the housing accommodations above described were vacated, and appellee proposed to convert them into a motor court; that he would do so after consultation with the Rent Control Office, and was advised that under the Regulations, it was permissible to conduct such a business (Par. 3, R. 3).

Appellee further alleged that subsequent to receiving this advice, he converted the housing accommodations into motor courts, creating eight units out of four, and that such conversion was begun after February 1, 1947, and was not completed until "approximately October 1, 1947" (R. 4). He further alleged that the premises, subsequent to October 1, 1947, were operated as a motor court (Par. 4, R. 3). Appellee alleged that the Act and the Rent Regulations issued thereunder became effective July 1, 1947, and that by their terms, motor courts were excluded from control (Par. 5, R. 5). He contended that by reason of said Act and Regulations, his premises were not subject to the Act or the Regulations, nor subject to any order of the Housing Expediter or the Defense Area Rent Director, in the exercise of his delegated authority (Par. 6, R. 5).

Appellee also alleged that on January 20, 1948, the appellant mailed a notice to him informing him that he intended to issue an order establishing maximum rents on the premises as converted (Par. 7, R. 5), and that on January 30, 1948, appellee filed objections

to the issuance of that order (Par. 8, R. 6). Appellee pleaded that on February 9, 1948, appellant issued and mailed to him, a notice stating that he intended to deny appellee's application for decontrol on the grounds that the premises were not operated as a "motel" on January 30, 1948 (Par. 9, R. 6). Appellee further pleaded that appellant intended to issue this order on February 18, 1948 (Par. 9, R. 6). The complaint alleged that unless restrained, appellant would issue an order establishing maximum rents for the motor court, and would order an action against appellee to restrain him from receiving amounts of rent in excess of any amounts established by the order (Par. 10, R. 6).

Appellee then pleaded that all such action to be taken by the Area Rent Director was taken at the express direction of the Regional Rent Director, "defendant's immediate superior in the Agency," and at the express direction of the Housing Expediter, and that, therefore, any petition to review such an order would be a futile gesture (R. 7). Appellee further pleaded that in the event that the Area Rent Director was reversed on an administrative appeal, the order would be prospective in operation only (R. 7). As a result, appellee claimed he would be left with the alternative of abandoning the collection of higher rentals, or running the risk of subjecting himself to an action for statutory damages for collection of rents in excess of those established by the orders, in the event his review of the Area Rent order proved to be unsuccessful (Par. 11, R. 7). In addition, appellee claimed he would be obliged to bring

successive actions in unlawful detainer because of tenants' refusal to pay appellee's established rent, and their insistence upon paying only the rent established by appellant (Par. XI, R. 7). According to the complaint, appellee was collecting rents at the rate of $35.00 a day, whereas the orders which appellee anticipated would be issued, proposed to reduce those rents to $12.00 per day (Par. XII, R. 8).

As relief, appellee prayed for:

1. A temporary restraining order, and a preliminary and final injunction against the defendant from issuing the proposed orders establishing any maximum rent for the said housing accommodations, and preventing him from taking any proceedings intended to compel a refund of rents already collected (R. 8).

2. An order to show cause why a preliminary injunction should not issue restraining the acts referred to in Paragraph 1, above; and

3. that the Court declare the right and duties of the parties under the Act and Regulations, with regard to the housing accommodations above-described (R. 8–9).

B. *Motion to dismiss complaint denied*

To this complaint, appellee filed a motion to dismiss upon the following grounds (Supp. R. 61–62):

1. that the Housing Expediter is an indispensable party to this action, and that appellant, as Area Rent Director, is merely a subordinate official who cannot be sued unless the Expediter is made a party;

2. that the official residence of the Housing Ex-

828611—49——2

pediter is in Washington, D. C., and that the suit must therefore be brought here;

3. that the suit is one against the United States, to which it has not consented; and

4. that the complaint fails to state a claim upon which relief can be granted.

This motion to dismiss was denied by the Court below (See Tr.).

C. *Answer*

Appellant thereupon filed an answer to the merits alleging that the premises described in appellee's complaint had been registered with the Office of the Housing Expediter on October 14, 1947, on the form provided by this Office for housing accommodations subject to the Rent Regulations and Controlled Rooms in Rooming Houses; that the registration statements showed that the housing accommodations were located at 8012, 8012½, 8012¼, 8012¾, 8012⅞, 8014, 8014½, 8014¼, 8014¾, South Vermont Avenue, Los Angeles (Par. I, R. 12).

Appellant admitted that he was administering the Housing and Rent Act and the Regulations issued pursuant thereto, but only to the extent authorized by Section 12–1600 of the Manual of the Office of the Housing Expediter, and pursuant to Rent Control Order No. 1, issued May 2, 1947 (Par. II, R. 13), 13 F. R. 2397. Based on lack of information and belief, appellant denied the conversations referred to in appellee's complaint, and denied all of the allegations of the complaint relating to appellee's operation of the "motel" (Pars. III & IV, R. 14). Appellant ad-

mitted that the Housing and Rent Act of 1947 and its amendment provided for decontrol of motor courts or any accommodations in motor courts which were such on June 30, 1947 (Par. V, R. 14–15).

Appellant alleged also that contrary to the appellee's complaint, the housing accommodations referred to were and are subject to the Housing and Rent Act of 1947, as amended, and Regulations and orders issued thereunder (Par. VI, R. 15). Appellant admitted the mailing of notices proposed to issue an order fixing maximum rents for said housing accommodations described as Room Nos. 1 to 9, inclusive, located at the address referred to in Paragraph I, above (Par. VII, R. 15). Appellant denied that appellee had ever filed objections to the issuance of the orders, but admitted he had filed an "Application for Decontrol of accommodations in hotels and tourist homes" (Par. VIII, R. 16). Appellant admitted that he had mailed a notice advising appellee that a preliminary investigation and other available information showed that all units in the housing accommodations were not subject to decontrol, and that if no reply and supporting evidence was filed in ten days, he may enter an order setting forth appellee's ineligibility for decontrol (Par. IX, R. 16). Appellant also admitted that he continues to contend that appellee's housing accommodations are not decontrolled (Par. IX, R. 16–17). Appellant admitted that he intended to establish maximum rents for the housing accommodations, but denied that he intended to direct the filing of an enforcement suit against appellee (Par. X, R. 17).

Appellant specifically denied that appeals from his orders are of no avail; specifically denied that any order issued by him would be automatically affirmed; and alleged that his orders had been reversed in both administrative appeal and review proceedings (Par. XI, R. 17). Appellant further denied that in all cases, the reversal of any order issued by the Rent Director takes effect only prospectively, but on the contrary, was of the belief that an order of reversal if granted in this case would be retroactive in effect (R. 17). Appellant also alleged he lacked adequate information and belief to admit or deny that tenants would refuse to pay rent in excess of the maximum, or that appellee would be subject to the filing of successive actions in unlawful detainer, or that tenants would assert the validity of the order to defeat actions by appellee for non-payment of rent (Par. XI, R. 17). Finally, appellant denied the allegation that by issuance of the order, appellee would suffer irreparable injury (Par. XII, R. 19).

D. *Plaintiff's motion for summary judgment granted*

Appellee thereupon moved for a summary judgment on the ground that these premises described in the complaint are and have been a motor court since October 1, 1947, and that the same are not "controlled housing accommodations" within the meaning of the Act and its amendment (R. 19–20). In support thereof, appellee filed his affidavits and those of his attorneys (R. 22–24, 33–57). Appellant filed an affidavit in opposition to the motion for summary judgment, in which he stated that he was the Area

Rent Director for the Los Angeles Defense-Rental Area, and that it was not within his authority to commence or direct the institution of legal proceedings for the purpose of enforcing the Act and the Regulations; that his authority was limited to the receipt and investigation of complaints, and upon information, to refer suspected violations to the "Rent Unit of the Office of the Housing Expediter for their consideration and account"; and that he had no intention of exceeding his authority or scope of his duties (R. 21). In addition, appellant opposed the motion for summary judgment upon the grounds stated in the motion to dismiss (Supp. R. 61).

After consideration of all the records and files in the action, the Court, on September 13, 1948, entered an order granting the motion for summary judgment on the ground that there was no genuine issue as to any material fact (R. 25). From that judgment, appellee appeals (R. 29).

SPECIFICATIONS OF ERROR

1. The Court below erred in granting appellee's motion for summary judgment because there were material issues of fact presented by the pleadings.

2. The Court below erred in granting judgment for appellee, and restraining appellant in the performance of his official duties, since the appellee had an adequate remedy at law and failed to exhaust his administrative remedies.

3. The Court below erred in entering judgment against appellant on the ground that the premises herein were not controlled housing accommodations,

but were exempt within the meaning of Section 202 (c) (2) of the Act.

4. The Court below erred in granting judgment for appellee herein because Tighe E. Woods, the Housing Expediter, was an indispensable party to this action, but was not joined as a party.

5. The Court below erred in granting judgment against the United States, the real party in interest, in an action in which it had not consented to be sued.

6. The Court below erred in failing to dismiss the complaint against the appellant on the ground that it failed to state a claim upon which relief could be granted.

7. The Court below erred in granting judgment for the plaintiff appellee.

ARGUMENT

I

The pleadings and papers heretofore filed in this action present material issues of fact barring summary judgment

The Court below erred in granting appellee's motion for summary judgment because the papers and pleading heretofore filed in this action present material issues of fact to be tried.

The appellee in his complaint alleged that the premises were being operated as a motor court (Par. 3, R. 3–4). In his answer, appellant, basing his denial on lack of information and belief, denied that this allegation was true (R. 14), thereupon placing this material question of fact in issue.

Moreover, The property which is subject of this cause of action consists of some nine buildings

and an iron shelter for automobile protection (R. 34). Some of the buildings are tenant-occupied, some are employee-occupied, some are owner-occupied, and others are used solely for business (R. 35). Furthermore, some of the buildings have been altered, and appellee claims that by reason of such alteration, they are subject to decontrol (R. 37). Others have not been altered, and the appellee claims that they are nevertheless subject to decontrol (R. 37).

Thus for example, in paragraph IV of his complaint, the plaintiff alleges that he altered the premises, converting "said housing accommodations, and made eight housing units out of what had been four units * * *" (R. 3). In his affidavit in support of the motion for summary judgment, the plaintiff offers to prove that there are nine units which have been created (R. 5). Furthermore, in paragraph III of his complaint he states that "he proposed to convert said housing accommodations and to use them in the conduct of the business of a motor court" (R. 3). But in his affidavit, he swears that "no change was made in the construction of the building known as 8012–7/8 * * *". Nevertheless, he lists that building as part of the motor court which he claims was decontrolled, although no change was made in the character of that building, no alterations were undertaken, nor were any completed.

From these confused and inconsistent statements made by appellee with respect to the character of these buildings, and in view of appellant's denial of Paragraphs III and IV of the complaint there can be little question but that substantial issues of fact have

been presented that can be resolved only after trial.

Furthermore, in his complaint, appellee alleges that unless restrained, appellant threatens to and will do the following things: (a) issue an order fixing the maximum rent for the housing accommodations; and (b) direct commencement of and commence an action against appellee to restrain the latter from demanding and receiving rents in excess of those fixed by appellant's order (Par. X, R. 6). In the answer, appellant admits the allegations contained in paragraph (a), but denies the allegations contained in paragraph (b) (Par. X, R. 17). Nevertheless, the decree in this case restrains the appellant from "taking any step or proceeding tending to or attempting to enforce any order * * *" (R. 28).

It will thus be seen that on its face, the denials in the answer to the allegations contained in the complaint raised genuine issues of fact which must be tried by the Court below. In addition, it should be noted that the answer denies that the housing accommodations involved in this case are a motor court entitled to decontrol (Par. VI, R. 15). That issue too, as we will see hereafter, is also one of material fact which should be disposed of only after trial, and not upon affidavits as was done in this case. We think that the rule which has frequently prevailed in cases between individual litigants barring summary judgment where a genuine issue of fact exists to be tried, should particularly apply to a case where an individual has brought suit against the United States or any of its agencies. This principle was summed up

by the Supreme Court in the case of *Eccles* v. *Peoples Bank,* 333 U. S. 426, 434, where it was said:

> A determination of administrative authority may of course be made at the behest of one so immediately and truly injured by a regulation claimed to be invalid, that his need is sufficiently compelling to justify judicial intervention even before the completion of the administrative process. But, as we have seen, the Bank's grievance here is too remote and insubstantial, too speculative in nature, to justify an injunction against the Board of Governors, and therefore equally inappropriate for a declaration of rights. This is especially true in view of the type of proof offered by the Bank. *Its claims of injury were supported entirely by affidavits. Judgment on issues of public moment based on such evidence, not subject to probing by judge and opposing counsel, is apt to be treacherous.* Caution is appropriate against the subtle tendency to decide public issues free from the safeguards of critical scrutiny of the facts, through use of a declaratory summary judgment. Modern equity practice has tended away from a procedure based on affidavits and interrogatories, because of its proven insufficiencies. Equity Rule 46 forbade such practice save in exceptional cases. [Italics added.]

As this Court said in *Gifford* v. *Travelers Protective Ass'n.,* 153 F. 2d 209, 211:

> The question presented by a motion for summary judgment is whether or not there is a genuine issue of fact, and not how that issue should be determined.

828611—49——3

In view of the foregoing, it was clearly error for the Court below to grant summary judgment in this case.

II

The Court below erred in granting judgment to appellee and restraining appellant in the performance of his official duties since the appellee has an adequate remedy at law, and has failed to exhaust his administrative remedies

At the outset, this Court's attention is directed to the allegation in the appellee's complaint which states "that any request to the Regional Rent Administrator to refuse the defendant's order or any appeal from defendant's order or from the Regional Rent Administrator's order on review of defendant's order to the Housing Expediter or to the Acting Housing Expediter would be of no avail and would result in the affirmance by them of defendant's order" (Par. XI, R. 7). Without dispute therefore appellee recognized that an administrative review had been provided to him from the Area Rent Director's order, but he failed to avail himself of that review because he thought it would be of no benefit to him. This does not affect the rule requiring exhaustion of administrative remedies.

Objection is made to the administrative hearing upon the ground that it is before the same authority which has preferred the charges and that it cannot be expected, therefore, to be fair and impartial and that the Act does not provide for judicial review of the Board's determination on the hearing. We cannot agree that courts should assume in advance that an administra-

tive hearing may not be fairly conducted. (*Fahey* v. *Mallonee,* 332 U. S. 245, 256.)

After having defined a "motor court" the Housing Expediter has afforded all landlords who disagree with him as to whether or not their properties are controlled, adequate opportunity for appeal and review, thereby affording them the due process required by the cases cited. The Housing Expediter has issued Part 825, Rent Regulations Under the Housing and Rent Act of 1947, as amended (13 F. R. 5706) and also Part 840, Revised Rent Procedural Regulation 1 (13 F. R. 2369) under the authority granted to him by Section 204 (d) of the Act. They provide for the issuance of rental orders by the Area Rent Director (825.5) on petition of the landlord for an adjustment or other relief (840.2), (*infra* p. 62). Provision is made for presentation of evidence to the Area Rent Director (840.8, 840.9, 840.10), for review by the Regional Housing Expediter (840.11, 840.12, 840.13) and Appeal to the Housing Expediter (Subpart B of Part 840). By these means ample opportunity is given for exhaustive consideration of all the available evidence with hearing in appropriate cases, which may also be treated "as a request for other relief pursuant to the regulation appealed from * * *" (840.34), (*infra* p. 62).

1. The failure of the defendant to resort to administrative remedies provided by the Housing Expediter precluded resort to the Court below for declaratory relief (*Aircraft & Diesel Corporation* v. *Hirsch,* 331 U. S. 752). "The rule is well settled that a person must first exhaust the prescribed ad-

ministrative remedy before he can seek any relief in the courts" (*Gates* v. *Woods,* 169 F. 2d 440, 442 (C. C. A. 4th), decided under the Housing and Rent Act of 1947); see too, *Koster* v. *Turchi* (C. C. A. 3d), decided February 24, 1949. Moreover, as the Supreme Court held in *Yakus* v. *United States,* 321 U. S. 414, 445–446, a defendant must first exhaust his administrative remedies even in a case where the defendant asserts the unconstitutionality of maximum prices he is charged with having violated. The obligation to exhaust all avenues of relief provided by regulation may not be avoided even by charging that the statutory maximum rentals are invalid, or that an appeal as provided would be futile, nor that the appeal would be useless, because it is before the same organization that issued the order. As stated by this Court in *La Verne Co-op. Citrus Ass'n* v. *United States,* 143 F. 2d 415, at p. 419:

> A study of relevant decisions leaves no doubt that an equity court has no jurisdiction to examine the validity of an administrative order where the administrative remedy has not been invoked or has not been completed and where the one harmed by the administrative order is the moving party in the equity action. *Lockerty* v. *Phillips,* 319 U. S. 182, 63 S. Ct. 1019, 87 L. Ed. 1339; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638; *United States* v. *Superior Court,* 19 Cal. 2d 189, 120 P. 2d 26.

See also, *Macauley* v. *Waterman Steamship Co.,* 327 U. S. 540; *Anderson* v. *Schwellenbach,* 70 F. Supp. 14 (N. D. Cal. 3 judge court).

Thus, it is submitted that the Court below improperly entertained this action because the defendant had not previously sought relief from the Expediter by the available administrative procedures.

2. Not only did appellee fail to exhaust his administrative remedies, but the action brought here is premature in any event.

Where the acts of a public officer are involved, there is a presumption that he will act in accordance with his oath and responsibilities. This is a recognized principle which has repeatedly led courts to refuse to issue injunctions against an administrative officer merely because as in this case it is feared that he will improperly perform his statutory duty. As was said in *Eccles* v. *Peoples Bank, supra*:

> Where administrative intention is expressed but has not yet come to fruition (*Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324, or where that intention is unknown (*Great Atlantic & Pacific Tea Co.* v. *Grosjean,* 301 U. S. 412, 429–30), we have held that the controversy is not yet ripe for equitable intervention. Surely, when a body such as the Federal Reserve Board has not only not asserted a challenged power but has expressly disclaimed its intention to go beyond the legitimate "public interest" confided to it, a court should stay its hand. (333 U. S. at p. 434.)

In *First National Bank of Albuquerque* v. *Albright,* 208 U. S. 548, at p. 553, Justice Holmes speaking for the Supreme Court said:

> It is not for a court to stop an officer of this kind from performing his statutory duty for fear he should perform it wrongly.

The Court re-emphasized this point in *White* v. *Macy,* 246 U. S. 606, at p. 609 when it said:

> Again it is true that Court will not issue injunctions against administrative officers on the mere apprehension that they will not do their duty or will not follow the law.

More recently, the Supreme Court in *Yakus* v. *United States,* 321 U. S. 414, 439 said:

> Under these sections the Administrator may not only alter or set aside the regulation, but he has wide scope for the exercise of his discretionary power to modify or suspend a regulation pending its administrative and judicial review. Hence we cannot assume that petitioners, had they applied to the Administrator, would not have secured all the relief to which they were entitled. The denial of a right to a restraining order of interlocutory injunction to one who had failed to apply for available administrative relief, not shown to be inadequate, is not a denial of due process'' (p. 439).

Other cases to the same effect are:

Dalton Adding Machine Co. v. *State Corporation Commission,* 236 U. S. 699.

Natural Gas Pipeline Company v. *Slattery,* 302 U. S. 300.

Bradley v. *City of Richmond,* 227 U. S. 477, 485.

Gulf Refining Company v. *Phillips,* 11 F. 2d 957 (C. C. A. 5th).

Stork Restaurant Corporation v. *McCampbell,* 55 F. 2d 687 (D. C. N. Y.).

Since appellee had an adequate and complete remedy at law, the court below was in error in granting equitable relief.

III

The Court below erred in holding that the premises herein operated as a motor court were decontrolled pursuant to Section 202 (c) of the Act, although the premises were not operated, and by plaintiff-appellee's admission were not identified as such on June 30, 1947

The decontrol provision of Section 202 (c) of the Housing and Rent Act of 1947 (50 U. S. C. A. 1892 (c) and its 1948 amendment (Pub. L. 464, 80th Cong. 2d Sess. Sec. 201) provide that certain controlled housing accommodations, among them motor courts, were to be decontrolled as of June 30, 1947. In order for housing accommodations to qualify for decontrol as a motor court pursuant to the Act, an accommodation must have been a motor court on that date. In accordance with that provision of the Act the Expediter has declared that the housing accommodations in the case at bar are not subject to decontrol, because they were not a motor court on June 30, 1947.

The appellee concedes that he did not operate the premises as a motor court on June 30, 1947 (R. 40). He contends, however, that pursuant to Section 202 (c) (2), *infra,* p. 47, the premises were decontrolled by virtue of operation as a motor court at any time after June 30, 1947, in this case on October 1, 1947. The Court below sustained that contention in its judgment (R. 26). The appellant maintains that this construction of the Act must be rejected for the following reasons:

1. The plain language of the Act is opposed to the construction given by the Court below.

2. The legislative history supports the appellant's construction of the Act.

3. The construction given by the Court below is contrary to the interpretations issued by the Expediter which are enitled to great weight here.

4. The construction given by the Court below would thwart the purposes of the Act.

5. The construction given by the Court below is contrary to judicial construction of similar provisions under the Emergency Price Control Act of 1942.

These contentions will be considered in order.

1. The plain language of the Act is opposed to the construction given by the Court below

The plain reading of the Act is opposed to the construction which the Court below gave to it. Section 204 (b) of the Act provides that no person shall demand or receive rent greater than that established under the Emergency Price Control Act "and in effect with respect thereto on June 30, 1947."

The maximum rent in effect on June 30, 1947, on the premises located at 8012–14 South Vermont Avenue, Los Angeles, was the rent previously registered for the housing accommodations by the appellee. Any other reading of the Act with respect to these premises would clearly distort the plain meaning of the words used.

The appellee concedes that these premises were not in fact nor were they operated as a motor court on June 30, 1947 (R. 40). The record is silent that any application for decontrol of these premises was duly made at any time after the original registration statement had been filed. If the statute means what it says, it is perfectly clear that these premises were subject to the Rent Regulation for Housing on June

30, 1947, and did not qualify as a motor court until October 1, 1947.

Section 202 (c) provides:

> The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include * * *
>
> (2) Any motor court or any part there; * * *.

Pursuant to this provision of the Act, the Expediter issued a regulation (12 F. R. 4331) which provided in Section 1:

> (b) *Housing to which this regulation does not apply.* This regulation does not apply to the following: * * *
>
> (7) *Accommodations in hotels, motor courts and tourist homes* * * *
>
> (ii) Housing accommodations in motor courts * * *.

In order to accept the construction urged by the appellee and accepted by the Court below it is necessary to rewrite the plain language of the statute. As quoted above Section 204 (b) of the Act provides that the maximum rent with respect to a housing accommodation must have been that "on June 30, 1947." In order to support the construction given the Act by the Court below that language must be amended to read "in effect with respect thereto on (*or after*) June 30, 1947." However, it is apparent that neither the appellee nor the Court below may rewrite the Act in the guise of interpreting it. If Congress had chosen to create a fluid period during

which landlords could convert controlled accommodations into decontrolled property, it could easily have said so. This it did not do.

It will be noted also that if accommodations are entitled to decontrol, it is only because of the exemption provided by the Act. To accept the construction of appellee, would require the exemption to be given a liberal interpretation. It is, however, a primary principle of statutory construction that exceptions to an Act are to be strictly construed (*McCauley* v. *Makah Indian Tribe,* 128 F. 2d 867, 879 (C. C. A. 9th); *Aragon* v. *Unemployment Compensation Commission,* 149 F. 2d 447, 449 (C. C. A. 9th); *Phillips Company* v. *Walling,* 324 U. S. 490). "One of the general rules of statutory construction is that a proviso or exception in a statute is to be strictly construed, and one who sets up an exception must establish it as being within the words as well as the reason thereof" (*Jones* v. *H. D. & J. K. Crosswell,* 60 F. 2d 827, 829 (C. C. A. 4th)). The rule of construction of exemptions from remedial legislation was more recently stated by the Supreme Court in *Phillips Company* v. *Walling, supra,* as follows (at p. 493):

> Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, given due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.

Furthermore, this Court has held in *Aragon* v. *Unemployment Compensation Commission, supra* (149 F. 2d at p. 449), that not only must the exception be strictly construed, but that the burden of proving the construction is upon the person claiming the exemption.

2. The legislative history supports the appellant's construction of the Act

Not only does the language of the Act, but likewise its legislative history, and purposes amply bear out the Expediter's contention that the crucial date for decontrol was June 30, 1947. The whole subject of extending rent control and the Expediter's administration and interpretation of the Act was exhaustively reviewed by the Senate and the House of Representatives before amending the Act and extending it to April 1, 1948.[1]

As part of this exhaustive review the Congress insisted upon a change in the Expediter's regulation pertinent to hotels as expressing more fully the intent of the Congress (See p. 8 Senate Report No. 896—80th Cong., 2d Sess.). However, no change was made regarding the Expediter's regulation and application of that regulation defining and decontrolling motor courts. On the contrary, in commenting upon its

[1] Hearing, Senate Banking and Currency Committee, 80th Cong., 1st Sess., January 30–February 24, 1947, 541 pages; Hearing, House Banking and Currency Committee on H. R. 2549, 80th Cong., 1st Sess., March 17–28, 1947, 608 pages; Hearing Subcommittee on Senate Committee on Banking and Currency, Part 1, January 17–26, 1948, Part 2, January 28–February 4, 1948, on Extension of Rent Control, 80th Cong., 2d Sess., and Hearings, House Banking and Currency Committee, February 3–10, 1948, 80th Cong., 2d Sess.

amendment to Section 202 (c) providing for decontrol of trailers and trailer spaces, the Senate Committee in its report said:

> (b) Paragraph (2) of the present law, which decontrolled motor courts and tourist homes, has been expanded to include trailers and trailer space. This ratifies what already has been done by regulation of the Housing Expediter. (*Ibid.*)

The House Committee used substantially identical language in reporting the bill to the House when it said:

> Paragraph (2), which decontrolled motor courts and tourists homes is changed so as to include trailers and trailer space. This ratifies what has already been done by regulation of the Housing Expediter. (p. 3 House of Representatives Report No. 1560, 80th Cong., 2d Sess.)

Apparently, not only was Congress aware of the regulation which provided for a cut-off date but likewise found no fault with its application. If the Congress had been dissatisfied with the Expediter's application of June 30, 1947, as a cut-off date presumably it would have amended the Act as to require the Expediter to modify his regulation for purposes of employing a more fluid period for decontrol rather than the fixed date selected. This it did not do although the Act was extensively amended in other respects. On the contrary, in reporting the amended Act to the Senate its Committee in Report No. 896 stated at p. 9:

> Subsection (b) of Section 204 of the present law continues in general the maximum rents in effect on June 30, 1947 * * *.

There can be no serious dispute that Congressional reenactment of a law which has been interpreted by regulation constitutes ratification of that regulation (*Bowles* v. *Wheeler,* 152 F. 2d 34, 38 (C. C. A. 9th); *Porter* v. *McCullough,* 154 F. 2d 876 (C. C. A. 9th); *Pinkus* v. *Porter,* 155 F. 2d 90, 93 (C. C. A. 7th). In the *Wheeler* case, *supra,* this Court speaking through Judge Bone reviewed a legislative situation similar to the case at bar in that extensive hearings were held by the Congress on the point at issue in reenacting legislation. Holding that such interpretations have been given binding effect by Congressional approval Judge Bone said:

> With this frank and illuminating explanation and interpretation of departmental procedure before it, Congress extended the life of the Act. When reenactment of the statute occurs legislative ratification of the administrative interpretation may well be inferred. See *Green Valley Creamery* v. *United States,* 1 Cir., 108 F. 2d 342; *Brewster* v. *Gage,* 280 U. S. 327, 50 S. Ct. 115, 74 L. Ed. 457; *McCaughn* v. *Hershey Chocolate Co.,* 283 U. S. 488, 51 S. Ct. 510, 75 L. Ed. 1183. If Congress was averse to this type of enforcement operations, it could have amended the enforcement provisions but it did not. Courts are not barred from the use of such legislative history which are pertinent aids to statutory construction and legislative in intent.

In the *Pinkus* case, *supra,* the Court was concerned with the administrative subpoenas. The Administrator called the Court's attention to the fact that these subpoenas were explained to a Congressional

Committee not specifically concerned with the extension of the Price Control Act. The appellate court nevertheless considered that the reenactment of the Act providing administrative subpoenas in the light of this testimony was Congressional approval of such practice.

> The re-enactment of the Act after such administrative construction was made known to Congress constitutes a legislative ratification of that interpretation (155 F. 2d at 93).

In addition to the usual reviews given to administrative regulations and interpretations of legislative acts, the Expediter appeared before a joint Congressional Subcommittee after the 1948 amendment had been enacted in order to ascertain whether the Act was being administered as was intended by Congress. This session was held on April 1, 1948 (Subcommittee of the Committees on Banking and Currency, U. S. Senate and House of Representatives), and was entitled Administrative and Policy Interpretation of the Housing and Rent Control Act of 1948. It was called for the "purpose of conferring with the Acting Housing Expediter, Mr. Tighe Woods, and selected members of his staff, about the Housing Expediter's administrative and policy interpretation of the Housing and Rent Control Act of 1948" (Vol. 1, p. 2, *supra*). In the course of that conference the Expediter was asked a series of questions regarding the administrative interpretation of the Act. In discussing the application of the Expediter's regulation pertinent to hotels, the following conversation occurred:

> Senator CAIN. * * * I only have one question to raise in connection with Mr. Wolcott's feeling: What is your cut-off date?
>
> Mr. DUPREE. June 30, 1947. That was the date that the Housing and Rent Act came into existence.
>
> Senator CAIN. Well, would there be reason, Mr. Dupree, for putting the cut-off date as the effective date of the new law?
>
> Mr. DIGGLE. Yes, sir, there would be. There have been so many attempts to circumvent the Housing and Rent Act of 1947 by putting out a sign in front calling it a hotel.
>
> Senator CAIN. Well, we are not in sympathy with any of that business, and we will support you gentlemen in that respect. * * *

From the foregoing there can be no question that the Congess was fully informed that since July 1, 1947, the Housing Expediter has been using June 30, 1947, as the effective date for housing accommodations to qualify for decontrol, and that the Congress approved use of that date.

3. The construction given by the Court below is contrary to the interpretations issued by the Expediter which are entitled to greater weight here

Shortly after the enactment of the Housing and Rent Act of 1947 the General Counsel in his monthly letter for September 1947, issued an interpretation regarding Section 1 (b) (8) (ii) in respect to motor courts. In that interpretation he said:

> In order that property may be decontrolled as a motor court, it must have been a motor court on June 30, 1947. If it were not a motor court on that date it may not later be decon-

trolled as a motor court by reason of changes subsequent to that date.

In November 1947, in response to inquiries about partial decontrol, the General Counsel issued a second interpretation. In that interpretation he said:

> An establishment was operated as a motor court on the maximum rent date, served transient guests, furnished services customarily supplied by motor courts in the community, and was registered on the DH–D form. The occupancy later changed to permanent guests who furnished their own linens and required no maid service. As the permanent guests vacated, the cottages in the court are rented for transient occupancy with all the services originally furnished. The establishment has made application for decontrol. In commenting on post review concerning the above facts, we held that such an establishment could not be considered as part motor court and part otherwise. It was our opinion that the Housing and Rent Act of 1947 decontrols motor courts as a whole without regard to the nature or term of the renting within the motor court, that in such cases it is necessary to make a determination as to whether a motor court actually existed on June 30, 1947. We also pointed out the distinction between motor courts and hotels calling attention to the fact in the case of hotels only the individual rooms receiving the required services are decontrolled whereas in motor courts it is the motor court itself even though one of the rooms or units did not receive all of the services.

These interpretations were in existence and in effect at the time that the Congress considered amending

the Act. The Congress, as noted above amended the Act extensively but did not in any way change the Expediter's application of June 30, 1947, as the "cut-off" date. Consequently, on August 25, 1948, the Expediter issued Interpretation No. 2 (See, *infra,* p. 59), in which the Expediter again set forth the "test date for decontrol." That interpretation was published in the Federal Register (13 F. R. 5001). The rent regulation was also amended to conform to this interpretation.

The original regulation issued by authority of the Housing and Rent Act of 1947 provided that "This Controlled Housing Rent Regulation shall become effective July 1, 1947." In making the effective date of the regulation and the above provision of that regulation effective as of June 30, 1947, the Expediter was acting in accordance with Section 204 (b) of the Act which provided:

> (b) During the period beginning on the effective date of this title and ending on the date this title ceased to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: * * *.

The amendment to the Act effective April 1, 1948 (Pub. L. 464, 80th Cong. 2d Sess.), amended Section 204 (b) but did not alter the effective date of June 30,

828611—49——5

1947. So much of the amendment pertinent here reads as follows:

> (b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, during the period beginning on the effective date of this title and ending on the date this title ceased to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947 * * *.

Based upon these interpretations the housing accommodations in this action did not come within the 202 (c) (2) exemption of "controlled housing accommodations" on June 30, 1947, and hence are subject to the Act.

Although the interpretation of a statute is not binding on the courts, it is entitled to great weight (*Skidmore* v. *Swift and Company,* 323 U. S. 134, 139–140), particularly "when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion * * *" (*Norwegian Nitrogen Company* v. *United States,* 288 U. S. 294, 315; see also, *United States* v. *American Trucking Association,* 310 U. S. 534, 549; *Missel* v. *Overnight Motor Transportation Company,* 126 F. 2d 98 (C. C. A. 4th), affirmed, 316 U. S. 572).

4. The construction given by the Court below would thwart the purposes of the Act

The most casual reflection will show the need for the cut-off date. Without it the possibilities of evading the control provisions of the Act are inexhaustible. In addition, the use of a system of decontrolling housing accommodations on a piece meal or day to day basis after June 30, 1947 would defeat the purposes of the Act. The objectives of the Act are "to prevent inflation and for achievement of reasonable stability in the general level of rents * * *" (Section 201 (b). In speaking of the general level of rents the Congress obviously was referring to the level of rents on controlled housing accommodations. In achieving this stability the Congress was obviously not too concerned with motor courts, their creation, retention or demolition, since it exempted them from all control. The Congress was, however, concerned with the shortage of housing accommodations. In attempting to provide for the economic needs of the nation as a whole with regard to shelter and housing accommodations the Congress had two main reasons for decontrol. The first ground was the decontrol of hotels, motor court and tourist camps because the cost of operating those accommodations in terms of wages and services had increased out of all proportion. Furthermore, it was not concerned with the existence of a shortage in transient accommodations. On the other hand the Congress decontrolled new construction of housing accommodations in an effort to stimulate production of those accommodations in a market in which building and material costs had substantially increased since the termina-

tion of price control. There is no indication in the legislative history that the Congress ever intended the diversion of building materials from the field of residential construction into that for tourist courts, tourist camps, and motor courts. On the contrary, there is every indication that the Congress intended the exact opposite.

If the construction given to the statute by the Court below is sustained, there will be a premium awarded to all landlords to convert their premises from permanent housing accommodations into transient accommodations as motor courts or tourist camps. In order to sustain the Court below it would be necessary to distort the objectives of the Act by reading Section 202 (c) (2) in a vacuum. However, it is a cardinal principle of statutory construction that an act must be read in its entirety in order to achieve its purpose (*United States* v. *American Trucking Association,* 310 U. S. 534, 543). It is therefore necessary to read Section 202 (c) (2) and Section 204 (b) together in order to achieve "reasonable stability" and not to thwart the purposes of the Act by diverting permanent housing accommodations into the transient accommodation market.

On the other hand to adopt the ruling below we must impute to Congress the wholly unreasonable intention to stimulate the construction of motor courts, and to divert vitally needed construction supplies from housing accommodations. This we may not do.

By decontrolling motor courts which were in that category on June 30, 1947, the Congress recognized that there was no shortage, and that the operators of

them were entitled to increased revenue to meet increased costs of wages and services. Clearly, however, Congress was not interested in diverting these materials needed for new housing accommodations into the construction of motor courts, thus working at cross-purposes with itself.

It can readily be seen that by adhering to appellee's reasoning, the Act reaches absurd results, by sanctioning basic contradictions. It is respectfully submitted that this court will not adopt a construction of a statute that is contradictory, when a logical alternate exists consistent with the purposes of the legislation.

5. The construction given by the Court below is contrary to judicial construction of similar provisions under the Emergency Price Control Act of 1942

There can be no serious dispute with the Expediter's application of the "Maximum Rent Date Method" of establishing legal rents. Since the earliest days of rent control such method has been in use, and has been sanctioned by the Courts. *Chatlos* v. *Brown,* 136 F. 2d 490, 493 (E. C. A.); *Spaeth* v. *Brown,* 137 F. 2d 669, 670 (E. C. A.); *Taylor* v. *Brown,* 137 F. 2d 654, 659 (E. C. A.). Certainly there can be "no constitutional objection if Congress as a war emergency measure had itself fixed the maximum rents in these areas," *Bowles* v. *Willingham,* 321 U. S. 503, 517. This language applies equally to the Housing and Rent Act of 1947, *Woods* v. *Cloyd W. Miller Company,* 333 U. S. 138, 68 S. Ct. 421.

In enacting Section 204 of the said Act the Congress provided that it is unlawful to accept rent "greater than the maximum rent established under

authority of the Emergency Price Control Act of 1942, as amended, and *in effect with respect thereto on June 30, 1947"* (Section 204 (b), Emphasis added), see *infra,* p. 48. The Congress further provided that the Expediter "is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this Section and Section 202 (c)" (Section 204 (d)).

By authority of the cases above cited (p. 33) this method of control finds ample support in the Courts, especially the Emergency Court of Appeals. In *Chatlos* v. *Brown, supra,* the court recognized the complainant's "proper" concession of the validity of the "Maximum Rent Method."

> Furthermore, complainant properly concedes that the Act "specifically authorized the Maximum Rent Date Method" of rent stabilization adopted by the Administrator in Maximum Rent Regulation No. 5. Rentals are thus rolled back and frozen as of an earlier date and at levels which landlords and tenants had worked out for themselves by free bargaining in a competitive market, prior to the time when defense activities had injected into the market an abnormal factor resulting, or threatening to result, in rent increases inconsistent with the purposes of the Act. This method has been used in England. See 5 and 6 Geo. V, c. 97; 10 and 11 Geo. V, c. 17; 2 and 3 Geo. VI, c. 71. The same is true in Canada. See Orders-in-Council, P. C. 8965, Nov. 21, 1941. Shortly before the passage of the Emergency Price Control Act of 1942, Congress prescribed the maximum

> rent date method in the District of Columbia Emergency Rent Act, 55 Stat. 788, D. C. Code 1940, § 45–1601, et seq.

The same court in approving the former rent regulations recognized the authority of the Administrator to issue them within the expressed Congressional policy. In *Taylor* v. *Brown,* the Court said:

> It is well within its power to clothe the Administrator with authority to ascertain the rental areas in which maximum rent regulation is required and to formulate in accordance with the standards in each such area. *United States* v. *Rock Royal Co-op.,* 1939, 307 U. S. 533, 59 S. Ct. 993, 83 L. Ed. 1446; *Sunshine Coal Co.* v. *Adkins,* 1940, 310 U. S. 381, 60 S. Ct. 907, 84 L. Ed. 1263; *Opp Cotton Mills* v. *Administrator,* 1941, 312 U. S. 126, 657, 61 S. Ct. 524, 85 L. Ed. 624; *Commonwealth & Southern Corp.* v. *Securities and Exch. Commission,* 3 Cir., 1943, 134 F. 2d 747.

It is thus clear that the appellee's contention that the cut-off date should be ignored cannot be sustained for the following reasons: First, because the plain language of the Act is opposed to the construction given by the Court below; second, because the legislative history supports the appellant's construction of the Act; third, because the construction given by the Court below is contrary to the interpretations issued by the Expediter which are entitled to great weight here; fourth, because the construction given by the Court below would thwart the purposes of the Act; and fifth, because the construction given by the Court below is contrary to judicial construction of similar provisions under the Emergency Price Control Act of 1942.

It is respectfully submitted that the Court below erred in finding for the appellee that it was not necessary for the housing accommodations in question to have been a motor court on June 30, 1947 to be eligible for decontrol.

IV

The Court below erred in granting judgment to the plaintiff-appellee herein against the defendant-appellant area rent director, who is a subordinate of Tighe E. Woods, the Housing Expediter, in whom all powers and duties pertaining to rent control are reposed by Section 204 (a) of said act, and is therefore an indispensable party to this action

The defendant appellant herein filed a motion to Dismiss this action in the Court below on the ground, among others, that he was a subordinate of the Housing Expediter, and any action taken by him was at the direction of the Expediter, and by virtue of his express delegation. Therefore, Tighe E. Woods, the Housing Expediter, is an indispensable party to the action, who is not within the jurisdiction of the Court. The court overruled said motion. It is respectfully submitted that in so holding the Court below was in error.

The Housing and Rent Act of 1947 vests all powers, functions, and duties in the Expediter (Sec. 204 (a)). The Expediter is also given the power to make such adjustments in such maximum rents as may be necessary to correct inequities, or further carry out the purposes and provisions of this title (Sec. 204 (b)). The Expediter is further authorized and directed to remove any maximum rents in any defense-rental area if, in his judgment, the need for continuing them no

longer exists (Sec. 204 (c)). The Expediter is authorized to issue such regulations and orders necessary to carry out the rent control provisions (Sec. 204 (d)). The Expediter is authorized to create local advisory boards which may make recommendations to the Expediter for decontrol of defense rental areas.

In his Complaint in the instant case, appellee in effect prayed for an injunction enjoining the defendant, (individually) and as Area Rent Director, his agents and employees and "*all* persons acting in concert" with him from enforcing or seeking to enforce rent ceilings and other provisions of the Act, so far as the premises herein are concerned (R. 3). Moreover, appellee asked for a declaratory judgment which would declare that defendant has no power, authority, or jurisdiction to issue any order of any kind with respect thereto. In addition appellee concedes that appellant's action is "made at the express direction * * * of the Housing Expediter" (R. 7). Since the decree prayed for would by its terms necessarily require the Expediter himself to take action, as a person acting in concert with appellant, and in fact, specifically directing the latter and hence responsible for any action taken by him, it must be evident that the Expediter is an indispensable party within the ruling of this Court in *Neher* v. *Harwood,* 128 F. 2d 846, and the decisions of the Supreme Court in *Williams* v. *Fanning,* 332 U. S. 490, *Gnerich* v. *Rutter,* 265 U. S. 388; *Webster* v. *Fall,* 266 U. S. 507; *Warner Valley Stock Company* v. *Smith,* 165 U. S. 28; *Alcohol Warehouse Corporation* v. *Canfield,* 11 F. 2d

828611—49——6

214 (C. C. A. 2d); *National Conference on Legalizing Lotteries* v. *Goldman,* 85 F. 2d 66 (C. C. A. 2d); *Jewel Production* v. *Morgenthau,* Secretary of the Treasury, 11 F. 2d 390 (C. C. A. 2d).

In *Williams* v. *Fanning, supra,* the Postmaster General, after a hearing in Washington, D. C., found that petitioners' weight-reducing enterprise was fraudulent. He accordingly issued a fraud order directing the respondent, as postmaster at Los Angeles, where petitioners do business, to refuse payment of any money order drawn to the order of petitioners, to advise the remitter of such money order that payment had been forbidden, and to stamp "fraudulent" on all matter directed to petitioners, and to return it to the senders. Petitioners sued the local postmaster to enjoin him from carrying out the order. Motion to dismiss was made on the ground that the Postmaster General was an indispensable party, and granted by the lower courts. The Supreme Court reversed, and held that the motion to dismiss should be overruled. Speaking of *Gnerich* v. *Rutter, supra,* and related cases, the Court said (p. 493):

> These cases evolved the principle that the superior officer is an indispensable party if the decree granting the relief sought will require *him* to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him. [Italics added.]

The Court then compared the facts and principles in those cases with the facts and principle laid down *in Colorado* v. *Toll,* 268 U. S. 228, and at the same

time, stressed the fact that there was no conflict between these two lines of cases, since the *Toll* case involved a situation where "relief against the offending officer could be granted without risk that the judgment awarded would 'expend itself on the public treasury or domain, or *interfere* with the *public administration.*' *Land* v. *Dollar,* 330 U. S. 731, 738." [Italics added.]

The Supreme Court went on to say that the decree in the case before it was like the decree in the *Toll* case, since it will "effectively grant the relief desired by expending itself on the subordinate official who is before the Court." The Court declared that it was the local postmaster *alone* "Who refuses to pay money orders, who places the stamp 'fraudulent' on the mail, who returns the mail to the senders." Thus, as the Court further pointed out, if the local postmaster "desists in those acts, the matter is at an end. That is all the relief which petitioners seek." Comparing the case before it and the facts in the *Rutter* and related cases, the Court concluded as follows (p. 494):

> The decree in order to be effective need not require the Postmaster General to do a single thing—he need not be required to take new action either directly as in the *Smith* and *Fall* cases or indirectly through his subordinate as in the *Rutter* case. *No concurrence on his part is necessary* to make lawful the payment of the money orders and the release of the mail unstamped. Yet that is all the court is asked to command. [Italics added.]

When these principles are applied to the facts in the instant case, it becomes clear that the *Rutter* and related cases should control, rather than the *Toll* case.

As was pointed out above, the Housing and Rent Act of 1947 not only vests all powers, functions, and duties in the Expediter, but also the power to make such adjustments in such maximum rents as may be necessary to correct inequities, or further carry out the purposes and provisions of this title. The Expediter alone is further authorized and directed to remove any maximum rents in any defense-rental area if, in his judgment, the need for continuing them no longer exists.

Hence, in this case, unlike the *Fanning* case, we do not have a situation where relief can be granted against the subordinate employee named as a defendant without risk that the judgment would interfere with public administration of an Act designed to prevent runaway rent increases. It also falls squarely within the line of cases cited in *Williams* v. *Fanning,* at page 493, where "the superior officer is an indispensable party if the decree granting the relief sought will require him to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him."

This was the reasoning applied in *Whitehall* v. *Turchi* (E. D. Pa.), No. 8078, decided March 24, 1948, not reported, a case squarely in point, where the court said:

> There is no doubt that if the Regulation is held invalid and the ruling sustained by the appellate courts, the administration of the Act

throughout the entire country will be affected and hence it cannot be said that the judgment awarded would not "interfere with the public administration." *Land* v. *Dollar,* 330 U. S. 731, 738. As a matter of fact, in that event the Regulation would have to be rescinded or changed. Otherwise, the Housing Expediter would be in the position of directing and requiring its subordinates, by a general regulation, to act contrary to the law. Therefore, "the decree granting the relief sought will" not only interfere with the public administration but will "require him (the defendant's superior) to take action." *Williams* v. *Fanning,* U. S. Supreme Court, decided December 8, 1947. Although such a decree would not in terms order him to do so, the matter is one of substance, and if the ultimate result of the decree would be to compel action by the superior, the superior is an indispensable party.

The Court continued in its analysis of this problem regarding actions against the Housing Expediter with a paraphrase from the case of *Gnerich* v. *Rutter,* illustrating the exact parallel between the holding in that case and the case at bar.

One of the cases referred to by the Supreme Court as evolving the principle upon which it rested its decision in *Williams* v. *Fanning, supra,* was *Gnerich* v. *Rutter,* 265 U. S. 388, and what was said in the opinion in that case can be paraphrased to fit the present case, "The act and the regulations make it plain that the (local Rent Directors) are mere agents and subordinates of the (Housing Expediter). They act under his direction and perform such

> acts only as he commits to them by the regulations. They are responsible to him and must abide by his direction. What they do is as if done by him. He is the public's real representative in the matter and, if the injunction were granted, his are the hands which would be tied. All this being so, he should have been made a party defendant—the principal one—and given opportunity to defend his direction and regulations."

Such was also the holding of Judge Coxe in the case of *Prince* v. *United States of America, Office of the Housing Expediter,* etc., in dismissing a case in the District Court for the Southern District of New York (Civil No. 48–327) decided January 19, 1949, where the Court said:

> I think that this proceeding must be dismissed. Without passing upon the other objections raised by the defendants, it is clear that the Housing Expediter is an indispensable party, for the relief sought by the plaintiffs "will require him to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him" (*Williams* v. *Fanning,* 332 U. S. 490, 493).
>
> The Defendants' motion to dismiss is accordingly granted and the plaintiffs' motion denied.

In *American Communications Ass'n.* v. *Schauffler,* 80 F. Supp. 400 (E. D. Pa.), an action was brought for injunctive relief to restrain the defendant individually and as Regional Director of the National Labor Relations Board, from conducting an election under the National Labor Relations Act. Sustaining a motion to dismiss, Judge Kalodner, speaking for

the majority of a three-judge court, said the following (at p. 401):

> We are of the opinion that the members of the Board are indispensable parties and that the plaintiff's failure to join them as parties defendant is fatal to the instant action. Accordingly the motion to dismiss must be granted on this score.
>
> The decree sought by plaintiffs will, if issued, require the Board, the defendant's superior, to take action. This is evidenced if only by section 9 (c) (1). Accordingly the Board is an indispensable party and the rule as clarified in *Williams* v. *Fanning,* 1947, 332 U. S. 490, 68 S. Ct. 188, becomes applicable.

On the basis of these authorities, we submit that the Expediter is the indispensable party here.

V

The Court below erred in refusing to dismiss this action as one against the United States, in which it had not consented to be sued

The court below erred in refusing to recognize this action as one against the United States. In his motion to Dismiss (R. 62) the appellant urged that this action was one against the sovereign and one in which it had not consented to be sued. The court below, nevertheless, overruled appellant's objection and entered judgment for appellee.

> No principle is better established than that the United States may not be sued in the courts of this country without its consent * * *. That the United States is not named in the record as a party is true. But the question

> whether it is in legal effect a party to the controversy is not always determined by the fact that it is not named as a party on the record, but by the effect of the judgment or decree which can be rendered. *Louisiana* v. *McAdoo,* 234 U. S. 627, 628, 629. See also, *Transcontinental & Western Airlines* v. *Farley,* 71 F. 2d 288, 290 (C. C. A. 2d), certiorari denied, 293 U. S. 603.

Any judgment or decree which can be rendered in this case will plainly affect the rights of the United States. The grave need for the continuation of rent control was made clear by Congress in its declaration of policy under Section 201 (b) of the Housing and Rent Act of 1947, when it declared that it "recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas." With this vital public welfare at stake, it is plain that the Government is the real party in interest and the attempt made here to prevent Government officials from discharging their statutory responsibilities is in reality a suit against the United States.

This conclusion is thoroughly supported by controlling decisions of the Supreme Court and lower courts. (*Naganab* v. *Hitchcock,* 202 U. S. 473; *Wells* v. *Roper,* 246 U. S. 335; *United States* v. *Griffin,* 303 U. S. 226; *Mine Safety Appliance Company* v. *For-*

restal, 326 U. S. 371;[2] *United States Department of Agriculture* v. *Hunter,* 171 F. 2d 793 (C. C. A. 5th).

Even though the action in this case is against officers or agents of the United States, it is not one to enjoin individual action contrary to law, but rather a suit to restrain an officer of the Government in performance of his official duties and, therefore, it is an action against the United States.[3] Such an action will not lie unless the United States has consented to be sued. Since the United States has not consented to be sued in this type of proceeding, and since it is an indispensable party to this case, this action against the Government officers must be dismissed. *Louisiana* v. *McAdoo, supra; Wells* v. *Roper, supra; Naganab* v. *Hitchcock, supra; Bryan* v. *United States,* 99 F. 2d 549 (C. C. A. 10th), certiorari denied, 305 U. S. 661; *Noce* v. *Edward C. Morgan Company,* 106 F. 2d 746 (C. C. A. 8th); *Wilson* v. *Wilson,* 141 F. 2d 599 (C. C. A. 4th); *International Trading* v. *Edison,* 109 F. 2d 825 (App. D. C.), certiorari denied, 310 U. S. 652;

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[2] Suit to restrain Secretary of the Interior from carrying out the provisions of Act of June 27, 1902, c. 1157, 32 Stat. 400, controlling the disposition of pine lands ceded by the Indians is, in effect, a suit against the United States. *Naganab* v. *Hitchcock, supra.*

Suit to enjoin Postmaster General from annulling contract for collecting and delivering mail in Washington, deemed one against the United States. *Wells* v. *Roper, supra.*

Suit to set aside an order of Interstate Commerce Commission concerning railway mail pay is not primarily one against the Commission, but is primarily against the United States. *United States* v. *Griffin, supra.*

[3] Cf. *United States* v. *Koike,* 164 F. 2d 155 (C. C. A. 9th); *Fleming* v. *Findlay,* 165 F. 2d 79 C. C. A. 9th); *Fleming* v. *Goodwin,* 165 F. 2d 334 (C. C. A. 8th); *D'Oench* v. *Woods,* 171 F. 2d 112 (C. C. A. 8th).

Haskins Bros. & Company v. *Morgenthau, Secretary of Treasury, et al.,* 85 F. 2d 677 (App. D. C.); *Krug* v. *Fox,* 161 F. 2d 1013 (C. C. A. 4th); *Howard* v. *United States,* 126 F. 2d 667, 668 (C. C. A. 10th), certiorari denied, 62 S. Ct. 1297; *Ainsworth* v. *Barn Ball Room,* 157 F. 2d 97 (C. C. A. 4th).

On the basis of the foregoing authorities the Court below erred in failing to dismiss the action as one against the United States in which it has not consented to be sued.

CONCLUSION

The appellant herein respectfully submits that the Court below erred in granting appellee's motion for summary judgment; that the judgment below should be reversed; and that the Court below should be directed to dismiss the complaint.

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APPENDIX

Housing and Rent Act of 1947 (50 U. S. C. A. 1881 et seq.) (Public Law 129—80th Congress; Chapter 163—1st Session)

DEFINITIONS

Sec. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions

of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

PUBLIC LAW 464—80TH CONGRESS; CHAPTER 161—2D SESSION; S. 2182

TITLE II—MAXIMUM RENTS

SEC. 201. Section 202 (c) of such Act, as amended, is amended by striking out paragraphs (2) and (3) thereof and inserting in lieu of such paragraphs the following:

"(2) any motor court, or any part thereof; any trailer or trailer space, or any part thereof; or any

tourist home serving transient guests exclusively, or any part thereof; or

"(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect; or (B) which for any successive twenty-four month period during the period February 1, 1945, to the date of enactment of the Housing and Rent Act of 1948, both dates inclusive, were not rented (other than to members of the immediate family of the landlord) as housing accommodations; or (C) the construction of which was completed on or after February 1, 1945, and prior to February 1, 1947, and which between the date of completion and June 30, 1947, both dates inclusive, at no time were rented (other than to members of the immediate family of the landlord) as housing accommodations; or

"(4) nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if (A) no more than two paying tenants, not members of the landlord's immediate family, live in such dwelling unit, and (B) the remaining portion of such dwelling unit is occupied by the landlord or his immediate family."

SEC. 202. (a) Section 204 (a) of such Act, as amended, is amended by striking out "March 31, 1948" and inserting in lieu thereof "March 31, 1949."

(b) Section 204 (b) of such Act, as amended, is amended to read as follows:

"(b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommodations within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title. In the making of adjustments to remove hardships due weight shall be given to the question as to whether or not the landlord is suffering a loss in the operation of the housing accommodations.

Revised Rent Procedural Regulation No. 1. Part 840 (13 F. R. 2369)

§ 840.8. *Action by the Area Rent Director on petitions for adjustment of other relief.* (a) Upon receipt of a petition for adjustment or other relief, and after due consideration, the Area Rent Director may either:

(1) Dismiss any petition which fails substantially to comply with the provisions of the applicable maximum rent regulation or of this part; or

(2) Grant or deny, in whole or in part, any petition which is properly pending before him; or

(3) Notice such petition for oral hearing to be held in accordance with § 840.10; or

(4) Provide an opportunity to present further evidence in affidavit form, in connection with such petition.

(b) An order entered by an Area Rent Director upon a petition for adjustment or other relief, or an order entered by an Area Rent Director on his own initiative or upon remand, shall be effective and binding until changed by further order and shall be final subject only to application for review or appeal as provided in § 840.11 or § 840.14 and following. An order entered by an Area Rent Director may be revoked or modified at any time, *Provided, however,* Due notice of the intention so to revoke or modify was previously given to all persons subject to such order, except as provided in § 840.11 (a).

(c) Upon remand of a proceeding to the Area Rent Director by the Regional Housing Expediter pursuant to § 840.12 or by the Housing Expediter pursuant to § 840.24, the Area Rent Director shall proceed in accordance with the order of remand and at the conclusion of such proceedings shall issue an appropriate order. Review of an Area Rent Director's order issued after remand shall be only by appeal to the Housing Expediter pursuant to § 840.14.

§ 840.9. *Evidence not subject to landlord's control.* In any proceeding before an Area Rent Director, the landlord may file a statement in affidavit form setting forth in detail the nature and sources of any evidence not subject to his control, but subject to the control of the Housing Expediter, upon which the landlord believes he can rely in support of the facts alleged in his petition or objections. Such statement shall

be accompanied by an application for assistance by way of interrogatories or otherwise, in obtaining documentary evidence or evidence of persons not subject to the control of the landlord, showing in every instance what material facts would be adduced thereby. Such application, if calling for the evidence of persons, shall specify the name and address of each person, and the facts to be proved by him, and if calling for the production of documents, shall specify them with sufficient particularity to enable them to be identified for purposes of production. Any such application for assistance must be directed to evidence subject to the control of the Housing Expediter.

§ 840.10. *Oral testimony*—(a) *Requests for oral hearing.* In most cases, evidence in proceedings before the Area Rent Director will be received only in written form. This procedure is most conducive to the fair and expeditious disposition of such proceedings. However, the Area Rent Director may, upon his own initiative, direct the receipt of oral testimony or the landlord may request that oral testimony be taken. Such request shall be accompanied by a showing as to why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the proceeding. In the event that an oral hearing is ordered, notice thereof shall be served on the landlord not less than five (5) days prior to such hearing. The time and place of hearing shall be stated in the notice. A presiding officer shall be appointed by the Area Rent Director with all necessary powers to conduct the hearing. Any such oral hearing may be limited in such manner and to such extent as is deemed appropriate to the expeditious determination of the proceeding.

(b) *Stenographic report of oral hearing.* A stenographic report of the oral hearing shall be made, a copy of which shall be available for inspection during business hours in the appropriate defense-rental area office.

Landlord's application for review of Area Rent Director's action

§ 840.11 *Landlord's application for review.* (a) Any landlord, except a landlord subject to an order issued pursuant to § 840.8 (c), whose petition for adjustment or other relief has been dismissed or denied in whole or in part by the Area Rent Director, or any landlord subject to an order entered by the Area Rent Director on his own initiative, may file with the Area Rent Director an application for review of such determination by the Regional Housing Expediter for the region in which the defense-rental area office is located: *Provided,* That any landlord subject to an order entered under section 5 (d) of any maximum rent regulation or subject to an order entered by the Area Rent Director under § 840.7, may either apply for review of such order as provided in this section, or may appeal any provision of such order as provided in § 840.14 and following of this part. An application for review shall be filed in triplicate upon forms prescribed by the Housing Expediter and pursuant to instructions stated on such forms. Upon the filing of an application for review or appeal with respect to such determination, the Area Rent Director shall forward the record of the proceedings, with respect to which such application for review is filed, to the appropriate Regional Housing Expediter, or, in the case of an appeal, to the Housing Expediter: *Provided, however,* That the Area Rent Director, within fifteen days after the filing of such application for re-

view or appeal, may grant the relief requested therein, in whole or in part, by revoking or modifying his order upon reconsideration, without notice, except where such order has the effect of requiring the landlord to make a refund to the tenant pursuant to the rent regulations and the landlord has obtained a stay of his obligation to refund in accordance with the provisions of this part.

Within ten days after date of issuance of an order upon reconsideration by the Area Rent Director, the landlord shall file in the Area Rent Office a written statement electing either to withdraw or to continue in effect the pending application for review or appeal. If such statement is not filed within the time provided the application for review or appeal shall be dismissed.

(b) Applications for review may be filed within sixty (60) days after the date of issuance of the determination to be reviewed. An application for review which is not filed within the specified time ordinarily will be dismissed unless special circumstances are shown to justify a later filing.

(c) Where the effect of an Area Rent Director's order is to require a landlord to make a refund to the tenant in accordance with the provisions of section 4 (c), 4 (e), 5 (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation, section 5 (b) (2) of the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, section 4 (c), 4 (e), 5 (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation for New York City Defense-Rental Area, section 5 (b) (2) of the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments in New York City Defense-Rental Area, section 4 (c), 4 (e), 5 (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation for Miami Defense-Rental Area, section 5 (b) (2) of the rent regulation for Con-

trolled Rooms in Rooming Houses and Other Establishments in Miami Defense-Rental Area, or section 4 (c), 4 (e), (5) (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation for Atlantic County Defense-Rental Area, the obligation to refund shall be stayed if the landlord, within thirty (30) days after the date of issuance of said order, duly files an application for review together with a refund transmittal memorandum directed to the Regional Budget and Finance Officer on forms prescribed by the Housing Expediter, accompanied by a certified check or money order in the amount of the refund payable to the U. S. Treasurer, and such additional information and documents as may be required. The money so deposited shall be distributed pursuant to the order of the Regional Housing Expediter or in accordance with the final disposition of the proceedings.

§ 840.12 *Action on applications for review.* Upon the filing of an application for review in accordance with § 840.11 and after due consideration the Regional Housing Expediter may, by appropriate order, affirm, revoke, or modify, in whole or in part, the determination of the Area Rent Director sought to be reviewed, or, if considered necessary or appropriate, may remand the proceedings to the Area Rent Director for further action not inconsistent with the determination of the Regional Housing Expediter. In any case where an application for review does not conform in a substantial respect to the requirements of this part, the Regional Housing Expediter may dismiss such application. An order entered by a Regional Housing Expediter upon an application for review shall be effective and binding until changed by further order and shall be final subject only to appeal as provided in § 840.14 and following of this part. An order entered by a Regional Housing Expediter

upon an application for review may be revoked or modified at any time, *Provided, however,* Due notice of the intention so to revoke or modify was previously given to the applicant.

If the effect of the order of the Area Rent Director is to require a refund of rent to the tenant under section 4 (c), 4 (e), 5 (b) (2) or 5 (c) (1) of the Controlled Housing Rent Regulation, section 5 (b) (2) of the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments, section 4 (c), 4 (e), 5 (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation for New York City Defense-Rental Area, section 5 (b) of the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments in New York City Defense-Rental Area, section 4 (c), 4 (e), 5 (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation for Miami Defense-Rental Area, section 5 (b) (2) of the rent regulation for Controlled Rooms in Rooming Houses and Other Establishments in Miami Defense-Rental Area, or section 4 (c), 4 (e), 5 (b) (2), or 5 (c) (1) of the Controlled Housing Rent Regulation for Atlantic County Defense-Rental Area, the modification or revocation of said order by the Regional Housing Expediter or by the Area Rent Director upon remand, as it affects the refund, shall be retroactive if a stay has been obtained pursuant to § 840.11.

§ 840.13 *Receipt of oral testimony.* (a) In most cases, evidence in application for review proceedings will be received only in written form. This procedure is most conducive to the fair and expeditious disposition of such proceedings. However, the person filing an application for review may request the receipt of oral testimony. Such request shall be accompanied by a showing as to why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application.

(b) In the event that the Regional Housing Expediter orders the receipt of oral testimony, notice shall be served on the person filing the application, not less than five (5) days prior to the receipt of such testimony, which notice shall state the time and place of the hearing and the name of the presiding officer designated by the Regional Housing Expediter.

(c) A stenographic report of any hearing of oral testimony shall be made, a copy of which shall be available during business hours in the appropriate Regional or Area Office.

SUBPART B—APPEALS TO THE HOUSING EXPEDITER

Introduction. Subpart B deals with "appeals" to the Housing Expediter. An appeal is the means provided for landlords to make formal objections to a maximum rent regulation or order.

The filing and determination of a proper appeal is ordinarily a prerequisite to obtaining judicial review of administrative determinations. At any time during the administrative consideration of an appeal directed solely to a regulation, the Housing Expediter may refer the appeal to the Area Rent Director for the area from which the appeal arises and request such Area Rent Director to make recommendation with respect to the disposition of the appeal.

General provisions

§ 840.14. *Right to Appeal.* (a) Any landlord subject to any provision of a maximum rent regulation, or of an order issued by a Regional Housing Expediter under § 840.12 (except an order remanding to the Area Rent Director), or of an order entered by an Area Rent Director under section 5 (d) of any maximum rent regulation, or of an order entered by an

Area Rent Director under §§ 840.7 or 840.8 (c), may file an appeal in the manner set forth below.

(b) A landlord is subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him.

(c) Any appeal filed by a landlord not subject to the provision appealed from, or otherwise not in accordance with the requirements of this part, may be dismissed by the Housing Expediter.

Part 825—Rent Regulations Under the Housing and Rent Act of 1947, as Amended

Decontrol of certain classes of housing accommodations

Sec. 1 (b) (2)—Interpretation 2—Aug. 25, 1948

II. *Motor courts*—1. *Provision of regulations.* Section 1 (b) (2) of the Regulations provides for decontrol of housing accommodations in establishments which were motor courts on June 30, 1947. A decontrol provision on motor courts has been included in the regulations since July 1, 1947, based upon section 202 (c) (2) of the Housing and Rent Act of 1947 which became effective on that date. The act as amended April 1, 1948, made no change in this provision.

2. *Test date for decontrol; June 30, 1947.* The test date for decontrol of housing accommodations in motor courts is and has been June 30, 1947. If on June 30, 1947, an establishment was a motor court, all the accommodations in the establishment are decontrolled, and this decontrol continues regardless of any change in facts or rental practices since June 30, 1947. Likewise, if on June 30, 1947, an establishment failed to meet the definition of a motor court, then the housing accommodations in that establishment are

not decontrolled under the "motor court" decontrol provision and no subsequent change in facts or rental practices would cause them to become decontrolled by virtue of that provision.

3. *Partial decontrol.* There is no partial decontrol in the case of motor courts. If an establishment was a motor court on June 30, 1947, all the housing accommodations in that establishment are decontrolled, including trailers and trailer spaces which were attached to and operated as part of the motor court.

CONTROLLED HOUSING RENT REGULATION

§ 825.10. *Controlled Housing Rent Regulation.* The Controlled Housing Rent Regulation, issued pursuant to the Housing and Rent Act of 1947, Public Law 129, 80th Congress, is as follows:

(b) *Housing to which this regulation does not apply.* This regulation does not apply to the following:

* * * * *

(7) *Accommodations in hotels, motor courts and tourist homes.* (i) Housing accommodations in any establishment which is commonly known as a hotel (See definition of hotel in section 1) in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively: *Provided, however,* That all such housing accommodations referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an appli-

cation for decontrol of such accommodations on a form provided by the Expediter within 30 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later: and *Provided, further,* That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

SECTION 825.1

* * * * *

(2) *Decontrolled housing to which this regulation does not apply.* This regulation does not apply to the following:

(i) *Accommodations in hotels, motor courts, trailers and trailer spaces, and tourist homes.* (*a*) Housing accommodations in a hotel (see definition of hotel in section 1) which on June 30, 1947, were occupied by persons to whom were provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy services (not necessarily all the types of services named need be provided in all cases, as long as enough are provided to constitute customary hotel services usually supplied in establishments commonly known as hotels in the community where they are located); (*b*) housing accommodations in establishments which were motor courts on June 30, 1947; (*c*) housing accommodations located in trailers and ground space rented for trailers; and (*d*) housing accommodations in any tourist home serving transient guests exclusively on June 30, 1947.

§ 840.2 *Landlord's Right to File Petition.* A petition for adjustment or other relief may be filed by any landlord subject to any provision of a maximum rent regulation who requests such adjustment or relief pursuant to a provision of the maximum rent regulation authorizing such action.

§ 840.34 *Treatment of Appeal as Request for Other Relief.* Any appeal filed from a provision of a maximum rent regulation may, in the discretion of the Housing Expediter, be treated not only as an appeal but also as a request for other relief pursuant to the regulation appealed from, when the facts produced in connection with the appeal justify such treatment.

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